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# ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 61

DATE: Wednesday, November 30th, 1988

BEFORE:

M.I. JEFFERY, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member




FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL  
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR  
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental  
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental  
Assessment for Timber Management on Crown  
Lands in Ontario;

- and -

IN THE MATTER of an Order-in-Council  
(O.C. 2449/87) authorizing the  
Environmental Assessment Board to  
administer a funding program, in  
connection with the environmental  
assessment hearing with respect to the  
Timber Management Class  
Environmental Assessment, and to  
distribute funds to qualified  
participants.

-----  
Hearing held at the Environmental  
Assessment Board's offices,  
2300 Yonge Street, Suite 1201,  
Toronto, Ontario, on Wednesday,  
November 30, 1988, commencing at  
1:00 p.m.

-----  
VOLUME 61

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member



A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	MINISTRY OF NATURAL
MS. C. BLASTORAH )	RESOURCES
MS. K. MURPHY )	
MR. B. CAMPBELL )	MINISTRY OF ENVIRONMENT
MS. J. SEABORN )	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN )	ASSOCIATION and ONTARIO
MS. E. CRONK )	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY )	ASSOCIATION
MR. J. WILLIAMS, Q.C.	ONTARIO FEDERATION OF
	ANGLERS & HUNTERS
MR. D. HUNTER	NISHNAWBE-ASKI NATION
	and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK )	FORESTS FOR TOMORROW
MR. R. LINDGREN )	
MR. P. SANFORD )	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
MR. D. WOOD )	POWER & PAPER COMPANY
MR. D. MacDONALD	ONTARIO FEDERATION OF
	LABOUR
MR. R. COTTON	BOISE CASCADE OF CANADA
	LTD.
MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES )	ASSOCIATION
MR. R. EDWARDS )	NORTHERN ONTARIO TOURIST
MR. B. McKERCHER)	OUTFITTERS ASSOCIATION
MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD )	





APPEARANCES: (Cont'd)

MR. J.W. ERICKSON, Q.C.)	RED LAKE-EAR FALLS JOINT
MR. B. BABCOCK )	MUNICIPAL COMMITTEE
MR. D. SCOTT )	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS OF COMMERCE
MR. J.W. HARBELL)	GREAT LAKES FOREST
MR. S.M. MAKUCH )	
MR. J. EBBS	ONTARIO PROFESSIONAL FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM ASSOCIATION OF ONTARIO
MR. D. COLBORNE	GRAND COUNCIL TREATY #3
MR. R. REILLY	ONTARIO METIS & ABORIGINAL ASSOCIATION
MR. H. GRAHAM	CANADIAN INSTITUTE OF FORESTRY (CENTRAL ONTARIO SECTION)
MR. G.J. KINLIN	DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC	MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES	ONTARIO FORESTRY ASSOCIATION
MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON WATCHDOG SOCIETY
MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON





APPEARANCES: (Cont'd)

MR. C. BRUNETTA

NORTHWESTERN ONTARIO  
TOURISM ASSOCIATION





1       ---Upon commencing at 1:00 p.m.

2                   THE CHAIRMAN: Thank you, ladies and  
3 gentlemen, please be seated.

4                   Nice happy group in a place other than  
5 the Ramada Inn for a change.

6                   Now, I take it everybody here has  
7 certainly had an opportunity to review the Board's  
8 ruling of November 25th regarding scoping procedures.  
9 As we indicated in the covering letter, this session is  
10 not meant for the purposes of deciding and reviewing  
11 and arguing as to whether or not we are going to have a  
12 scoping procedure instituted; we are.

13                   Basically what we are going to discuss  
14 here is perhaps any questions of clarification  
15 regarding the mechanics of how the scoping procedure  
16 will be implemented and, as you are all aware, this has  
17 not been tried before, at least in this forum, by the  
18 Board and I think it will be somewhat of an  
19 experimental procedure for all of us.

20                   We are looking to your cooperation  
21 throughout and the Board will be quite prepared to  
22 amend or redefine its procedures if we find in practice  
23 that it is not working to our satisfaction.

24                   So we are certainly hoping to proceed on  
25 the basis of what is set out here for Panel 8 and that

1 is one of the reasons why we decided in this scoping  
2 session scheduled for January 16th not to deal with  
3 Panel 9 at that time, even though we have asked that  
4 the statements of issue from the other parties be  
5 delivered with respect to Panels 8 and 9.

6 The reason for that is, is we have no  
7 idea at this point how long the evidence will take to  
8 go in for Panel 8 and we wanted to make sure that we  
9 would be ready to start Panel 9 with scoping in place  
10 at the appropriate time without having to adjourn to  
11 have a scoping session. What we hope to do is we will  
12 announce, after we commence Panel 8's evidence, when  
13 the scoping session will take place for Panel 9 so that  
14 it can follow right after that.

15 So, with that introduction, I guess we  
16 will turn it over to any of the parties to indicate if  
17 there are areas in this ruling that require  
18 clarification.

19 Mr. Campbell?

20 MR. CAMPBELL: Mr. Chairman, just  
21 speaking on behalf of my client, we have reviewed the  
22 order, I think the order is clear in its terms. I  
23 think the point that you make that it will be valuable  
24 to get some actual experience with the operation of the  
25 order is a very pertinent one.



1 I believe that we will be able to comply  
2 with the order as written and, as I say, we find it  
3 fairly straightforward and intend to file by January  
4 13th and will appear on the 16th for the scoping  
5 session. I don't think we have any submissions to make  
6 with respect to any required clarifications.

7 THE CHAIRMAN: Now, the only area that we  
8 might deal with - thank you, Mr. Campbell for those  
9 comments - is with respect to the executive summary  
10 contained as part of Panel 8. In looking over that  
11 executive summary, we are not convinced a hundred per  
12 cent that is exactly the form in which we hoped a  
13 statement of issues from the proponent would be  
14 produced.

15 Now, if you recall, Mr. Freidin, when we  
16 talked the last time you indicated that you were going  
17 to be producing the executive summaries and, therefore,  
18 why repeat in another document what essentially were  
19 statements of issue. All I am suggesting though is  
20 that when you look at the form of what you have got,  
21 you are referring to specific lines in the witness  
22 statement in certain paragraphs.

23 Just a moment, I will get you an example.  
24 For instance, on paragraph 18 --

25 MR. FREIDIN: What page?

1 THE CHAIRMAN: 77 of the witness  
2 statement. At the bottom, paragraph 18, page 77.

3 MR. FREIDIN: Yes.

4 THE CHAIRMAN: William Strait will attend  
5 the hearing and give evidence with respect to  
6 paragraphs 1 to 14 herein. Now, that in itself does  
7 not necessarily set out what issues will be dealt with  
8 by Mr. Strait. It may on those pages but what I am  
9 saying in the executive summary is does not indicate in  
10 terms of the issue or defining the issue exactly what  
11 those issues are and the parties would have to then  
12 refer to those specific lines in the witness  
13 statements.

14 And I guess what we are looking at in  
15 future would be an executive summary or a statement of  
16 issues that would define the issue without explaining  
17 in a lot of detail. I guess what we are not looking  
18 for is the statement of issues to become another  
19 witness statement giving all the --

20 MR. FREIDIN: I think the one that Ms.  
21 Murphy did draft and did show to you, and which I  
22 believe you did indicate was acceptable, was a draft of  
23 the one for Panel 10.

24 THE CHAIRMAN: That's right.

25 MR. FREIDIN: That has been done. I have



1       seen the one done for 11 and it is in the same format.

2               THE CHAIRMAN:   Okay.   So that would be  
3       more of the type that we are looking for.   And 8 and 9  
4       were already done and already distributed and so they  
5       are in the old format and are not as precise as what we  
6       are looking for.

7               MR. FREIDIN:   Mr. Campbell indicates that  
8       Ms. Murphy may have circulated a draft of 8 done in the  
9       same fashion as No. 10.   I will check that, and if in  
10      fact that's been done --

11              THE CHAIRMAN:   I do not think we have  
12      seen that yet.

13              MR. FREIDIN:   No, but if it has been done  
14      in the final form, sure, we will provide that.

15              THE CHAIRMAN:   Okay.   And what we are  
16      looking for, I think, is that when the other parties  
17      respond in their statements of issue, I think it would  
18      be helpful if they followed the same order as the  
19      proponent in its statement and then indicated with  
20      respect to each issue which category the party in  
21      opposition felt that that issue fell into and, by  
22      categories, I mean those four bullets on page 2 of the  
23      order, because that will give all of us, when we go  
24      into the scoping session, an idea of where the parties  
25      feel or where that particular party's position is with

1       respect to each particular issue.

2               All of you understand the difference that  
3       the Board meant between the item set out in bullet 1  
4       and the item set out in bullet 4, and if you did not I  
5       will just clarify what we had in mind, and that was:  
6       Bullet 1, those issues which parties do not intend to  
7       dispute would be issues upon which the parties were  
8       essentially in agreement and did not feel were  
9       necessary to be addressed either in-chief or in  
10      cross-examination.

11             In other words, the issues were set out  
12      in the witness statement, the parties do not take issue  
13      with those and do not feel that they have to be further  
14      addressed.

15             Bullet 4 are those issues which a party  
16      may feel is sufficiently set out in the witness  
17      statement by the proponent but upon which they may not  
18      agree and, therefore, may nevertheless wish to  
19      cross-examine.

20             Once again, with the item in bullet 4 it  
21      may not require any direct evidence or  
22      examination-in-chief on the part of the proponent  
23      because the parties feel it has been sufficiently  
24      addressed in the witness statement itself or the  
25      supporting documentation.

1                   Now, does anybody else have any other  
2 queries with respect to this?

3                   Mr. Williams?

4                   MR. WILLIAMS: Mr. Chairman, I was  
5 waiting to see what senior counsel have to say on the  
6 issue and I don't know whether Mr. Freidin, as the  
7 proponent, is intending to make any comment or not.

8                   MR. FREIDIN: I am not.

9                   MR. WILLIAMS: Given that's the  
10 situation, I am taking you at your word and I am here  
11 asking for clarification on a number of the issues that  
12 I see emerging from this document and which could give  
13 us some concern and perhaps you can assist in  
14 clarifying some of what appear to be some of the  
15 implications.

16                   The wording in itself is straightforward,  
17 I don't know that they are at issue but, if I might,  
18 Mr. Chairman, I want to be absolutely certain in my  
19 mind so that I can report to my client that while all  
20 of this process is well intentioned and, in fact, is  
21 not one of unintentional prejudice to any of the  
22 parties because of the position that they may take in  
23 the order of cross-examination and for other reasons  
24 that they may be in support of or opposed to.

25                   So if I might, Mr. Chairman, there were



1       six or seven points that I would like to ask your  
2       assistance on in clarifying what the ramifications  
3       would be as far as the application is concerned of  
4       these points.

5                       If I might, coming firstly to items --  
6       statements of issues of other parties and the statement  
7       of issues as referred to therein shall specifically  
8       identify the following - bullet one that you referred  
9       to a few moments ago - those issues which parties do  
10      not intend to dispute.

11                      Now, perhaps the basic question is  
12      whether in fact parties in filing their statements of  
13      issues are able to do so without prejudice, given that  
14      it may well be that once information emerges during the  
15      scoping session or as reflected in the statement of  
16      issues, that while to that party at the time they file  
17      the statement of issue there was certainly an issue  
18      which they did not intend to dispute, but on the basis  
19      of things that transpired subsequent thereto, they may  
20      become very contentious issues that would necessitate  
21      our falling back and I guess contradicting ourselves  
22      and saying:

23                      Well, at the time it appeared not to be  
24      in dispute, because of issues we did raise in dispute  
25      they have in effect triggered something that brought

1        what appeared to be non-disputable issues into dispute.

2                        How would that --

3                        THE CHAIRMAN:    Okay.    I think the Board  
4        would attempt to handle that on the basis that we would  
5        be discussing issue-by-issue in the scoping session the  
6        statement of issues filed by the proponent and the  
7        statements of issues filed by the other parties and try  
8        and obtain a consensus in the scoping session as to  
9        whether that issue fell into a particular category or  
10       did not.

11                      So, in other words, if you identified  
12        when you filed your statement of issue as one being not  
13        in dispute, that issue would still be discussed in  
14        general terms at the scoping session.

15                      If it turned out at the scoping session  
16        that you found that you had to change the category as a  
17        result of what came out of the scoping session, then  
18        the Board would listen to the submissions and  
19        hopefully, at that point, arrive at a consensus amongst  
20        the parties.

21                      And when I say a consensus, it may be  
22        that not all parties are going to agree, but what I am  
23        trying to say is, is that we are not going to  
24        necessarily give directions to say that you cannot  
25        address that issue at the hearing.

1 MR. WILLIAMS: Understood, yes.

2 THE CHAIRMAN: Okay. We are not going to  
3 up front make that kind of determination.

4 What we are trying to say is, is that  
5 when we get to the hearing, if it appears that most of  
6 the parties are agreed that it is not a matter in  
7 dispute, then we would assume that that matter can be  
8 dealt with at the hearing in a very expeditious  
9 fashion. It will probably not require much in the way  
10 of evidence-in-chief from the proponent and if it does  
11 require any, it might be more properly directed towards  
12 your concern -- or not you, but one particular party's  
13 concerns that said it was a problem in the scoping  
14 session, and then the cross-examination presumably  
15 would be abbreviated as well because, essentially for  
16 most of the parties, it was not a matter in issue.

17 MR. WILLIAMS: All right. Well, let's  
18 take it to that stage where we have gone through the  
19 scoping session and it doesn't appear to create any  
20 difficulties, but then we get into actual cross and  
21 because of cross-examination the evidence does raise  
22 some points that relate back to those non-contentious  
23 issues, or so they appear to be even through the  
24 scoping process and only during the cross-examination  
25 does it become evident that here is an issue that was a



1 sleeper, so to speak and, in fact, it is something that  
2 very much has to be looked at in light of what evidence  
3 has been given during the cross-examination on issues  
4 that were agreed were in dispute.

5 THE CHAIRMAN: Well, I think in fairness  
6 we are going to have to deal with some of those on an  
7 ad hoc basis and just see to what extent those problems  
8 arise and how the Board can fairly deal with them.

9 You know, it is very difficult and we  
10 have been very careful in wording this order not to  
11 preclude flexibility. What we are trying to do is to  
12 get the parties to focus in on specific issues that  
13 they feel are or are not problems and require either  
14 elaboration in evidence-in-chief as well as extensive  
15 cross-examination.

16 We are not going to preclude the parties  
17 from cross-examination or preclude the proponent from  
18 examination-in-chief. What we are hoping to do is  
19 instead of them starting off not knowing where the  
20 other parties are coming from and which issues the  
21 other parties are going to find a problem and feel that  
22 they have to be dealt with extensively, we hope to get  
23 some of that information out in advance of the panel  
24 giving evidence and that will allow the proponent to  
25 prepare their witnesses to deal with issues that appear

1 to be in contention, more so than others.

2 Hopefully this, if I can call it,  
3 focusing on major issues in dispute will allow the oral  
4 portion of the hearing to be more productive.

5 MR. WILLIAMS: I understand. All right.  
6 Let's move to the next two bulleted items, if I might,  
7 where the issues that are in dispute and upon which  
8 cross-examination is going to take place.

9 Here I sense a potentially difficult  
10 practical problem arising bearing very much in mind  
11 that throughout the hearings, of course, the Board has  
12 been careful to instruct counsel, I think counsel has  
13 been cognizant of the need not to duplicate a  
14 cross-examination that other counsel have conducted on  
15 particular issues.

16 In this particular situation where  
17 everybody is sort of - if I can use the term - laying  
18 their cards on the table by putting forward their  
19 statement of issues, it may appear that three out of  
20 four of the parties represented by counsel may want to  
21 deal with the same issue.

22 Now, our concern is: Is the Board is  
23 going to exercise some authority and say who can or  
24 cannot deal with that one issue, given that all three  
25 parties may want to deal with that same issue but from

1 a different perspective?

2 THE CHAIRMAN: No, I think the Board  
3 would not alter its practice to date and that is there  
4 is an order for cross-examination that has been  
5 established and will be amended from time to time as  
6 the circumstances require; meaning, that if you  
7 identify an issue that you want to cross-examine on and  
8 so do some other parties, certain parties will be going  
9 first in cross-examination. At the end of their  
10 cross-examination you may well decide that what you  
11 wanted to deal with has been properly covered.

12 If so, and if you are not going to be  
13 dealing with something additional or from a different  
14 perspective, the Board would likely say: We are not  
15 going to hear it again, as we have done to this point.

16 MR. WILLIAMS: All right. At the scoping  
17 stage, is it your intention to say: Now, we have got  
18 three of you here wanting to deal with the same issue.  
19 Will each of you explain in detail and how you are  
20 going to approach that particular issue?

21 THE CHAIRMAN: No, I do not think we will  
22 say it at the scoping session. We will leave it to you  
23 to ascertain, when you have heard the cross-examination  
24 of the parties preceding you in the order that we have  
25 established, as to whether or not your client's



1 interest has properly been addressed. Okay?

2 MR. WILLIAMS: Okay. Well, that's  
3 important.

4 THE CHAIRMAN: And one other thing, when  
5 we deal with bullet 2, because I think this may be of  
6 some assistance.

7 What we meant in there, to some extent,  
8 is this: That notwithstanding that the proponent  
9 identifies certain issues in his statement of issues,  
10 you or other parties may feel that that panel should be  
11 dealing with a particular issue, that that is the  
12 appropriate panel that should be dealing with another  
13 issue that has not been identified by the proponent.  
14 You would raise it at the scoping session and that  
15 would give the proponent opportunity to come back with  
16 the following responses.

17 MR. WILLIAMS: Are you referring to  
18 bullet 2 or is this beyond that?

19 THE CHAIRMAN: No, bullet 2.

20 MR. WILLIAMS: Yes, all right.

21 THE CHAIRMAN: Where it says:

22 "Including those issues which may not  
23 appear in the executive summary of the  
24 party leading evidence."

25 MR. WILLIAMS: But that is still part of

1 the witness statement?

2 THE CHAIRMAN: That's right. That would  
3 give the proponent the option to say: I am not going  
4 to deal with it with this panel, it is going to be  
5 dealt with with some other panel later on; or it may  
6 allow the proponent to say: I am going to deal with  
7 that issue, although it is not in my statement of  
8 issues with this panel; or I suppose it is up to the  
9 proponent to formulate an answer which may say: I am  
10 not going to deal with it period, I don't think it is  
11 an issue in this hearing and if you wish to deal with  
12 it, speaking to the other party, call your own evidence  
13 on it.

14 And I think we have had categories of all  
15 of those scenarios in the hearing to date where the  
16 panel has been asked: Are you going to deal with  
17 something and the panel says: No, we are not going to,  
18 and then the question has been put to counsel for the  
19 proponent or one of other parties and the proponent  
20 said: I don't intend to deal with that.

21 MR. WILLIAMS: Or more frequently that it  
22 will be dealt with in a later panel.

23 THE CHAIRMAN: Or it will be dealt with  
24 in a later panel, but that is the idea of that.

25 MR. WILLIAMS: The usual scenario.

1                   MR. FREIDIN: Well, we won't get that as  
2 often, hopefully, when you see all of the evidence.

3                   THE CHAIRMAN: You know, and that is  
4 quite correct.

5                   MR. WILLIAMS: Can we get that on the  
6 transcript.

7                   THE CHAIRMAN: Anyway, that is what the  
8 Board meant by bullet No. 2.

9                   MR. WILLIAMS: All right, that's helpful.  
10 Thank you, Mr. Chairman.

11                   At the bottom of the page again, Mr.  
12 Chairman - it is a mechanical thing - there is an  
13 arbitrary aspect to it which creates a certain amount  
14 of uneasiness probably --

15                   THE CHAIRMAN: Properly qualified with  
16 where possible.

17                   MR. WILLIAMS: Yes, I see that, where  
18 possible, and I understand that. But certainly you  
19 say: Shall not be no more than five pages in length or  
20 whatever, probably none of us will go beyond two  
21 although it could well happen --

22                   THE CHAIRMAN: We could put it in as a  
23 plea; we could put it in as a request or any number of  
24 things. What we would like to get across, in terms of  
25 what we mean, is we do not want to reproduce in the



1       proponent's statement of issues another witness  
2       statement and we do not want to reproduce in the other  
3       parties' statements of issue a lot more paper.

4               What we are really trying to do is very  
5       succinctly define the issues and indicate which  
6       category from that parties' perspective they fall into,  
7       and just allow us to have a basis for a discussion in  
8       the scoping session itself.

9               We are hoping if the proponent's is  
10      limited to ten pages, that a particular party in  
11      opposition might only be limited to say something like  
12      five. It may not be possible for some panels, we  
13      recognize that. I am quite sure panel 15, Mr.  
14      Freidin - unless I am surprised - may be more than ten  
15      pages, maybe it will not, as far as your executive  
16      summary or statement of issues.

17              MR. FREIDIN: I will be able to tell you  
18      later much better in a month or so?

19              THE CHAIRMAN: Well, it would not  
20      surprise us if it were more than ten pages based on  
21      what is going to happen in Panel 15.

22              MR. FREIDIN: Somehow I think perhaps the  
23      shorter the proponent's executive summary the longer  
24      the statement of issues by others might be, so we are  
25      probably going to end up with the same number of pages

1       either way.

2                   THE CHAIRMAN:   Okay.   Well, we will deal  
3       with it then.

4                   MR. WILLIAMS:   Thank you, Mr. Chairman.  
5       There are just two other points here and I guess what I  
6       consider to be somewhat central to our concerns.

7       On page 3, sub (3): scoping sessions, sub-clause (b):

8                   "The Board shall review the parties'  
9                   specific issues identified in the  
10                  executive summary and all of the  
11                  statements of issues with a view to  
12                  assisting the parties in focusing their  
13                  resources and efforts upon those issues  
14                  to be addressed by all evidence at the  
15                  hearing."

16                  We take that wording literally, Mr.  
17       Chairman, that it would be to assist and not direct the  
18       parties as to what areas they would concentrate on,  
19       given as we were talking about earlier, there may be a  
20       collective interest on certain issues and, because of  
21       that, it is not going to be a selective process on yur  
22       part to say who will have the first opportunity to deal  
23       with it.

24                  THE CHAIRMAN:   That's what it says, it  
25       says assist.

1                   MR. WILLIAMS: Very good. I just want to  
2                   make that clear.

3                   THE CHAIRMAN: It could have say direct  
4                   and, in fact, in an earlier discussion we did use words  
5                   like direct. So I think you can take it that we mean  
6                   assist as opposed to direct.

7                   MR. WILLIAMS: I commend you for your  
8                   choice of words.

9                   Lastly, Mr. Chairman, the last paragraph  
10                  on page 4 and, again, I do commend the Board for what  
11                  it is endeavouring to do in tightening up the process  
12                  and to -- with the objectives of ensuring effective  
13                  participation of the parties with limited resources  
14                  which we feel that we fall well into that category, and  
15                  while shortening the process, certainly will bring  
16                  about those type of beneficial results, by the same  
17                  token it imposes that many more specific procedural  
18                  steps that have to be taken which in turn incurs added  
19                  input by way of personnel and other resources.

20                  THE CHAIRMAN: Well, we hope there will  
21                  be more than a net benefit. I mean, the point is if  
22                  the scoping procedures work through time we feel it  
23                  will focus the hearing, shorten the hearing, take less  
24                  time in terms of the oral part of the hearing and,  
25                  ultimately, save all the parties, the province and

1       everybody else money in the long run and will be less  
2       of a drain on resources overall, we hope.

3               You are quite right, there are some  
4       procedural obligations as a result of this order on the  
5       parties, but we feel that this is something that is  
6       necessary because, for whatever reason - and we are not  
7       blaming the parties to this particular hearing in  
8       particular - but, for whatever reason, the parties have  
9       not addressed their minds in a hearing of this type to  
10      actual focusing in on specific issues to the extent  
11      that the Board would like to see them focused in upon.

12             MR. WILLIAMS: I guess bearing in mind at  
13      the outset, of course, as an example executive  
14      summaries weren't a consideration, statements of issue  
15      weren't a consideration, these are all things that--

16             THE CHAIRMAN: Well, these things have  
17      evolved --

18             MR. WILLIAMS: --we understand are  
19      important to what you are trying to accomplish, but  
20      there are these added burdens that we have to assume  
21      and so we think you are probably right, that the net  
22      effect will be more beneficial than detrimental, but  
23      for those of us who have limited resources, we are  
24      certainly concerned but we certainly intend to  
25      cooperate and work with the Board to try to make this



1 work, but we just want to make sure that our rights  
2 inadvertently are not prejudiced in any way and, of  
3 course, all parties have that concern.

4 THE CHAIRMAN: Well, you know, I think by  
5 this point in the hearing you have ascertained, Mr.  
6 Williams, that the Board with go out of its way to  
7 ensure that the rights of parties are not trampled upon  
8 and that everyone gets a fair hearing and we are  
9 certainly going to continue that practice as will all  
10 panels of this Board in terms of hearings it conducts.

11 MR. WILLIAMS: Right. Just one last  
12 point I guess, Mr. Chairman. Coming back again just to  
13 the -- bearing in mind the order in which it has been  
14 determined that counsel and on behalf of the clients  
15 will do cross-examination before the Board on issues.

16 It has not been uncommon, for instance,  
17 with regard to interrogatories that counsel would use  
18 other interrogatories of other parties to develop  
19 cross-examination and make points which normally they  
20 will wait to see if the party who submitted the  
21 interrogatory are going to make use of their own  
22 information although, because of the order in which  
23 they appear, sometimes that's not possible.

24 In the same way, I guess there is this  
25 concern, once you put all your issues on the table as

1       you see them, whether there is the question of other  
2       counsel using what turn out to be, you know, valid  
3       issues that have been put forward by another party, and  
4       they precede that party in cross-examination and, sort  
5       of, in effect take that issue away from the party who  
6       brought it forward but follows after that party in  
7       cross-examination.

8                   THE CHAIRMAN:    Yes, but I mean, if the  
9       issue is dealt with to your client's interest's  
10      satisfaction, even if it is dealt with by another  
11      party, the Board is not interested frankly in hearing  
12      it from you again, unless you have something to add or  
13      unless you are attacking the issue from a different  
14      perspective, you know.

15                   And I do not understand, frankly, why all  
16      the parties are apprehensive, if they are, with what  
17      effectively is a discovery procedure. I mean, all  
18      counsel who are used to court procedure realize fully  
19      that, in most cases, the issues are out on the table  
20      well in advance of the trial itself and, in that way,  
21      it makes for a more concise focused trial or hearing  
22      because everyone knows where everyone else is coming  
23      from and there is no surprise and it is not waiting  
24      until the hearing itself, until the scenario unfolds.

25                   And, frankly, the Board sees absolutely

1 no reason why, in this type of proceeding, you cannot  
2 have the same benefits that effective arise from  
3 discovery. It is just that in administrative hearings  
4 discovery procedures have not been part of the  
5 formalized process. I think partly it would be  
6 difficult in some cases to do exactly what the courts  
7 have done because of the funding and resources side of  
8 it as well, because often the parties will not be  
9 funded until just before the hearing starts.

10 In some cases in the past parties who  
11 have been able to obtain intervening funding have not  
12 receive the funding until the hearing is underway. But  
13 as essentially what we are trying to put in place here  
14 is a discovery type of proceeding where all the parties  
15 know where the other parties are and upon what issues  
16 they are contesting and if another party deals with an  
17 issue that you are interested in as well, you do not  
18 get any points with the Board from putting it in two  
19 and three and four times. We do not sort of add up:  
20 Well, geez, 15 parties dealt with this issue therefore  
21 it must be real important.

22 You know, deal with it once unless, of  
23 course, your client has a different interest or you  
24 wish to deal with the issue on a different basis. And,  
25 in those cases, we would ask: What are you going to do

1       that is different from what we have already heard     and  
2       you would be required to justify why we should be  
3       hearing it for a second time.

4                 That goes in under the general repetitive  
5       aspects of the Board's procedure where we say  
6       essentially we don't want repetition.

7                 The Board will also, as you are well  
8       aware, be very vigilant on relevancy. So if you are  
9       going to explore areas that, for one reason or another  
10      the Board does not feel are relevant to the decision  
11      that it is going to ultimately make, we will be asking  
12      you: Show us the relevancy. But, I mean, that is no  
13      different from any other proceeding that you are  
14      probably used to.

15                MR. WILLIAMS: Thank you for that  
16      clarification, Mr. Chairman.

17                THE CHAIRMAN: Okay. Counsel for the  
18      industry, do you have any questions.

19                MS. CRONK: No, we don't, Mr. Chairman.  
20      And on behalf of our clients, we would simply like to  
21      indicate to the Board that we will cooperate in every  
22      way possible to make this a reality, to the extent that  
23      we possibly can.

24                THE CHAIRMAN: Thank you, Ms. Cronk.

25                Ms. Swenarchuk?



2

1 MS. SWENARCHUK: No questions, Mr.  
2 Chairman.

3 THE CHAIRMAN: Mr. Edwards?

4 MR. EDWARDS: One question, Mr. Chairman.  
5 When will we be able to confirm the MNR's statement of  
6 issues for Panel 8? I understood from Mr. Freidin that  
7 it may not be in the form that is expected for some of  
8 the later panels and I just want to know which document  
9 I am responding to.

10 MR. CAMPBELL: Mr. Chairman, my  
11 recollection is that the draft revised witness  
12 statements for both Panels 8 and 10 were distributed,  
13 if not on the last day of the hearing, certainly very  
14 close to that and so I think they are done.

15 THE CHAIRMAN: We know that we got 10.  
16 We got 8 as well?

17 MR. CAMPBELL: I believe 8 was handed out  
18 with 10.

19 MR. MANDER: I think we got 8 and 10. I  
20 will check.

21 THE CHAIRMAN: Okay.

22 MR. CAMPBELL: 8 and 10 were picked as an  
23 example. I have not seen anything on 9 yet of that  
24 format, but I believe 8 and 10 are out.

25 MR. EDWARDS: Mr. Chairman, I don't

1 believe I have got 8, so I will speak to Mr. Freidin  
2 after the...

3 THE CHAIRMAN: All right. Mr. Mander, I  
4 notice he just went out, but I am sure he went to look  
5 to see whether we here have No. 8. If we do, we will  
6 give you a copy today before you go.

7 MR. EDWARDS: Yes, thanks very much.

8 And just one further comment, Mr.  
9 Chairman. The scoping sessions, I know the first one  
10 is scheduled on January 16th here in Toronto. Do you  
11 have any anticipated location for the ones that will be  
12 taking place?

13 THE CHAIRMAN: Yes. The other ones we  
14 anticipate will be up in Thunder Bay because what we  
15 hope to do with the subsequent panels is to order a  
16 date upon which the statements of issues have to be  
17 filed and then about three or four days later set a  
18 time for the scoping session and what we will do is set  
19 a time towards the end of one of the hearing days and  
20 hold the scoping session as part of the hearing up  
21 there.

22 I do not think we will move it down to  
23 Toronto for scoping sessions. It was just because we  
24 were all here at this point, most of the parties were  
25 here as well.

1 MR. EDWARDS: Thank you, Mr. Chairman.

2 MR. CAMPBELL: Mr. Chairman, will it be  
3 possible for you at that time to fix a time and date  
4 for scoping sessions so that parties can attend for  
5 those particularly which I think would be advantageous  
6 from your point of view.

7 THE CHAIRMAN: Yes, yes. As soon as we  
8 fix the date for the filing of the statements of  
9 issues, we will also fix the date for the actual  
10 scoping session which, as we are indicating in here,  
11 will be three or four days later, that is to give  
12 people a bit of a time to discuss what is in the  
13 various statements of issue.

14 And, by the way, we want to make it quite  
15 clear, this does not preclude any of the parties from  
16 getting together on their own outside of the hearing  
17 and outside of the scoping session to discuss what  
18 their positions may or may not be on the various  
19 issues, so that when we do have the scoping session it  
20 can be that much more meaningful.

21 Anything further?

22 Mr. Williams?

23 MR. WILLIAMS: Sorry. They don't have a  
24 mike back there, Mr. Chairman.

25 On that point raised by Mr. Edwards,

1 would that mean that from a mechanical point of view  
2 the scoping for, say, the next panel following the one  
3 that is being dealt with would be dealt with, say, at  
4 the end of a hearing period, so that the parties are  
5 there rather than calling them in for a special week of  
6 scoping? Would it be sort of at the tail end of the  
7 hearings on a particular panel or something like that?

8 THE CHAIRMAN: I do not know if it would  
9 necessarily be at the tail end of a particular panel  
10 because we want to keep a flow going and we want to  
11 allow at least two weeks for the proponent to readjust  
12 the presentation as a result of what arises in the  
13 scoping session.

14 MR. WILLIAMS: My concern I guess really  
15 is the need to attend on a week that is set aside  
16 specifically just to scope an issue on a panel that is  
17 coming up and have to go to Thunder Bay for a day of  
18 scoping rather than that being dealt with in a week of  
19 a hearing where most of the parties would more than  
20 likely be there.

21 THE CHAIRMAN: Well, we want to make sure  
22 that the scoping session is at least or around two  
23 weeks ahead of when we might expect the next panel to  
24 testify.

25 MR. WILLIAMS: I understand that.



1                   THE CHAIRMAN: Whenever that happens will  
2 be when we hold the scoping session. In other words,  
3 there will be a bit of a forecast as to when are you  
4 going to be ready for the next panel to deliver its  
5 evidence. And we are going to sort of work backwards  
6 from that in order to determine when the scoping  
7 session will take place.

8                   If it happens in a week when some of the  
9 parties are not there because they are not interested  
10 in that present panel's evidence but there will be a  
11 scoping session, you may be forced to deal with it.

12                  MR. WILLIAMS: Oh no, I understand that,  
13 but what you are suggesting -- what I am looking for, I  
14 guess, is that they would be dealt with some time  
15 during the week when there is a normal sitting dealing  
16 with that panel.

17                  THE CHAIRMAN: Oh yes.

18                  MR. WILLIAMS: And it won't be dealt with  
19 separately?

20                  THE CHAIRMAN: That is what we just  
21 stated.

22                  MR. WILLIAMS: Yes. I just wanted to be  
23 clear.

24                  THE CHAIRMAN: We are not holding  
25 individual scoping sessions that are isolated from the

1       hearing itself. We hope to hold them on a particular  
2       day, hearing day towards the end of a day.

3               MR. WILLIAMS: That is what I wanted to  
4       make clear.

5               THE CHAIRMAN: Everyone will be there,  
6       hopefully.

7               Ms. Swenarchuk?

8               MS. SWENARCHUK: Mr. Chairman, I would  
9       just like to point out the added problems that this is  
10      going to cause for some of us with reduced resources  
11      related to the main hearing being in Thunder Bay  
12      because we are now going to be in a position of having  
13      to stagger time lines with various panels while we are  
14      up there and possibly produce materials that we are not  
15      going to have offices there to produce.

16              I suppose it is not going to be any more  
17      productive than it was last time when we talked about  
18      holding some of the hearings in Toronto, or the  
19      possibility of that, but it is going to be an added  
20      administrative burden for those of us without  
21      substantial offices there to be producing these  
22      materials in these staggered time lines away from  
23      Toronto.

24              THE CHAIRMAN: Well, I am not sure that  
25      it is going to be more productive in terms of moving

1 the hearing elsewhere, other than the various centers  
2 that we have indicated the parties can adduce their own  
3 evidence at.

4 MS. SWENARCHUK: This would be another  
5 advantage to holding at least part of the proponent's  
6 case back here.

7 THE CHAIRMAN: Well, Ms. Swenarchuk, I  
8 guess the quick answer is the Board really does not  
9 want to revisit this whole question again because it  
10 was the subject of some extensive discussion at the  
11 preliminary hearings across the province.

12 However, having said that, we might be  
13 interested in learning what the consensus is of all the  
14 parties to the hearing at this stage and to see whether  
15 or not all of the existing parties to the hearing feel  
16 that it would be productive to consider holding part of  
17 the proponent's case in Toronto.

18 And, again, we would not consider any  
19 other place other than Thunder Bay or Toronto. We are  
20 not going to visit discussion of whether it should be  
21 partly in North Bay and partly in Sudbury and partly in  
22 other places.

23 MR. CAMPBELL: Mr. Chairman, I am  
24 assuming that in posing that question you are not  
25 asking for submissions today?

1 THE CHAIRMAN: No.

2 MR. CAMPBELL: If you seriously want us  
3 to re-visit this, perhaps January 16th would be an  
4 appropriate date, but I will need to consult with my  
5 client.

6 THE CHAIRMAN: Exactly. No, we are not  
7 asking for any submissions today, but what we are  
8 saying is, is that if the Board were faced with a  
9 consensus, an overwhelming majority of the parties to  
10 this hearing representing their various interests who  
11 said that we would like to have a portion of the  
12 proponent's case go in in Toronto, the Board would have  
13 to look at that.

14 At the time we made our decision that it  
15 would be in Thunder Bay it was on the basis that  
16 several parties, during the course of those preliminary  
17 meetings, indicated that it would be appropriate as  
18 well to hold it in northern Ontario, at least the  
19 proponent's part of the case, as well as it was  
20 appropriate, in our view, to allow any of the parties  
21 to put in their evidence at any one of some 14 other  
22 locations, of which Toronto was one of those 14  
23 locations.

24 Now, we might be willing to reconsider  
25 that, but it would have to be for awfully good reasons



1 at this stage of the hearing, bearing in mind that  
2 people have made long-term commitments, offices and  
3 other facilities have been leased and rented on  
4 long-term basis and there would have to be a very,  
5 shall we say, overwhelming reason to change the venue  
6 as to where the proponent is going to put in its case  
7 at this time. But I guess, if there was a consensus of  
8 all the parties that it should be elsewhere, the Board  
9 would at least be willing to reconsider it, not  
10 suggesting that there be a change, but we might  
11 reconsider it.

12 Ms. Cronk?

13 MS. CRONK: Mr. Chairman, leaving aside  
14 the issue of whether there should be any change in  
15 that, I am really reflecting on a comment that Ms.  
16 Swenarchuk made.

17 As I understand, there is two aspects to  
18 it: The first is what she has described as the added  
19 burden in circulating paper. Surely that isn't an  
20 added burden in the sense that Notices of Motion seem  
21 to get served rather rapidly when necessary and...

22 THE CHAIRMAN: And we are not talking a  
23 lot of paper, if the parties stick to what we are  
24 talking about.

25 MS. CRONK: So what I am really

1 suggesting, Mr. Chairman, that as a reason for  
2 reconsidering the locational issue, that is not one.

3 The second aspect, what she raised, is  
4 really perhaps the added burden of physical  
5 inconvenience of attending in Thunder Bay for scoping  
6 sessions, is a thought that I raise for consideration  
7 by the Board, is that it may be possible, in some  
8 situations, not in all, to hold those scoping sessions  
9 in Toronto on a Friday in advance of particular panels  
10 which would meet, in a convenient sense, most counsel,  
11 including Ms. Swenarchuk.

12 Now, I recognize that depending on when a  
13 particular panel's evidence is concluded, that will not  
14 follow with your two-week period, but it may be  
15 possible, in some instances, to do it on a Friday  
16 within your two-week preservation of time period and  
17 allow her to attend without getting on a plane with  
18 that added convenience.

19 So it may be possible with the  
20 flexibility you indicated you intend to have in any  
21 event, you may be able to take that into account in  
22 scheduling the scoping sessions.

23 THE CHAIRMAN: Well, we will certainly  
24 schedule these things where we feel it will assist the  
25 parties to the greatest extent. The Board will be

1       there in any event, whether it is here or up in Thunder  
2       Bay and I think if it is shown to the Board that it  
3       would be more convenient to hold the scoping session  
4       for a particular panel in Toronto, we would be quite  
5       willing to do so.

6                       We just thought it would be easier for  
7       all the parties if we tacked it on on a particular  
8       hearing day when all the parties are there any way,  
9       essentially.

10                      Okay. Anything further?

11                      Very well, ladies and gentlemen, thank  
12       you very much for coming down.

13                      We shall await your submissions on the  
14       12th.

15       ---Whereupon the hearing adjourned at 1:45 p.m., to be  
16       reconvened on Monday, January 30th, 1989 at 9:00  
17       a.m.

18                               (Copyright, 1985)













